

This letter discusses registration of servicemen. See 86 Ill. Adm. Code 160.130. (This is a GIL.)

October 5, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 24, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing to request a confirmation or ruling that we are exempt from obtaining either a Retailer's Occupation Tax license or a Service Occupation Tax license. A similar copy of this letter has been sent to Local Government Services 3-520.

ABC is a government agency, providing personnel services to other government agencies and selected nonprofits. In addition, we recently acquired the rights to software which is licensed to other government agencies to assist in their personnel selection and assessment.

Enclosed are the following documents:

- 1) ABC's organizing document as a Joint Powers Agency
- 2) General information about ABC
- 3) IRS determination letter exempting ABC from income tax under IRC Section 115 (non-taxation of municipalities)
- 4) Certificate of Filing with the STATE Secretary of State which confirms that ABC is included in the roster of public agencies.
- 5) Website: _____

We believe ABC is exempt from Illinois Sales & Use tax registration and filing requirements for the following reasons:

- 1) ABC is a provider of professional services, which are not subject to sales tax
- 2) ABC is a government agency, selling to other government agencies exempted by Section 130.2055
- 3) Our software licensing agreements meet the exemption requirements of Section 130.1935. However, such transactions are already exempt due to the nature of the buyer (exempt government agencies)

Our situation is that none of our transactions will ever be subject to sales tax. All of our customers (limited to other government agencies and non-profits) are exempt from Illinois sales tax. In addition, none of our transactions, independent of customer, are subject to sales tax due to their nature of being a professional service or qualified software license agreement. As a result, Illinois sales tax will never apply to ABC transactions. Being required to apply for and maintain a sales tax permit seems to be an unfair administrative burden, both in gathering & maintaining such documentation as well as the costs associated in filing \$0 tax returns. In addition, ABC runs the risk of being assessed in an audit for a tax that was never due and never collected, simply due to a missing customer exemption document. Granting ABC the exemption would also save the Department of Revenue time and expense on its administrative end as well.

If you have any questions, please call me.

Thank you.

DEPARTMENT'S RESPONSE:

The Department of Revenue's Legal Service Office does not grant exemptions from the registration requirements under the Retailers' Occupation Tax and Service Occupation Tax Acts. Application for sales tax exemption certificates should be directed to the Exemption Division – Local Government Services Bureau. The following information regarding registration of servicemen may prove helpful. The registration requirements for servicemen maintaining a place of business in this State may be found at 86 Ill. Adm. Code 160.130.

The term “servicemen maintaining a place of business in this State” is defined in the Department's regulations as any serviceman having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the serviceman or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such serviceman or subsidiary is licensed to do business in this State. See 86 Ill. Adm. Code 160.105.

For information regarding the Service Occupation Tax Act, please refer to 86 Ill. Adm. Code 430.101. In addition, information regarding the taxation of software licenses may be found at 86 Ill. Adm. Code 130.1935.

Organizations that are exempt under federal income tax law are not automatically exempt under Illinois tax law. Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification “E” number. See 86 Ill. Adm. Code 130.2007. This number evidences that this State recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose.

Sales to a governmental body are subject to tax unless the governmental body has an active exemption identification "E" number. See 86 Ill. Adm. Code 130.2080. If an organization or governmental body does not have an "E" number, then its purchases are subject to tax. Please be aware that only sales to the organization or governmental body holding the "E" number are exempt, not sales to individual members of the organization. See 86 Ill. Adm. Code 130.2007. The tax consequences of sales by governmental entities are discussed in general information letter ST 04-0197-GIL.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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